



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 42:070. Out-of-service UST systems, temporary closure and permanent closure of  
6 UST systems, and change in service[~~change in service~~] of UST systems.

7 RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. Part 280  
8 Subpart G, [~~Part 281,~~] 42 U.S.C. 6991-6991c

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137[, ~~40 C.F.R.~~  
10 ~~Part 280 Subpart G, Part 281, 42 U.S.C. 6991c~~]

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the  
12 cabinet[~~Environmental and Public Protection Cabinet~~] to develop and conduct programs that  
13 provide for the prevention, abatement, and control of contaminants that may threaten the  
14 environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks[~~tank~~  
15 ~~(UST) systems~~] by requiring registration, minimum construction and performance standards,  
16 leak detection, recordkeeping, release reporting, corrective action, closure, financial  
17 responsibility, and other requirements[~~standards~~] to protect public health and the environment.  
18 KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements  
19 federal requirements for UST systems. [~~401 KAR Chapter 42 identifies requirements for UST~~  
20 ~~systems.~~] This administrative regulation establishes the requirements for out-of-service UST

1 systems, temporary and permanent closure of UST systems, and change in service of UST  
2 systems.

3 Section 1. ~~[Application of Federal Regulations. The requirements for temporary closure,~~  
4 ~~permanent closure, change in service, record keeping, and applicability to previously closed~~  
5 ~~UST systems are governed by 40 C.F.R. Part 280 Subpart G and this administrative regulation.]~~

6 Section 2.] Applicability. (1) This administrative regulation shall apply to an[any] owner  
7 or operator of a UST system that has a UST system release confirmed after October 1, 2011[the  
8 ~~effective date of this administrative regulation~~], or has submitted a "Notice of Intent to  
9 Permanently Close Underground Storage Tank System" DEP 7114, [(January 2006),] that has  
10 been received by the appropriate Division of Waste Management[~~cabinet's~~] regional office after  
11 October 1, 2011[~~the effective date of this administrative regulation~~].

12 (2) With the exception of those UST systems addressed in subsection (3) of this section,  
13 the[The] owners and operators of a UST system who have, prior to October 1, 2011[~~the effective~~  
14 ~~date of this administrative regulation~~], either submitted a notice of intent to permanently close  
15 underground storage tank systems, or reported a confirmed release to the cabinet, shall comply  
16 with the closure requirements [~~and corrective action requirements~~] in existence when the notice  
17 of intent to permanently close underground storage tank systems was received by the appropriate  
18 Division of Waste Management[~~cabinet's~~] regional office or the confirmed release was reported  
19 to the cabinet. This subsection shall not apply to the screening levels [for lead in soil], which  
20 shall be **determined**[addressed] in accordance with 401 KAR 42:080, Section 1(2)[1(3)].

21 (3) An owner or operator shall comply with the permanent closure requirements that were  
22 in place prior to April 18, 1994 for:

1        (a) A UST system that was taken out of operation prior to April 18, 1994, regardless of  
2        the submittal date of the Notice of Intent to Permanently Close Underground Storage Tank  
3        System;

4        (b) A Notice of Intent to Permanently Close Underground Storage Tank System was  
5        submitted after December 22, 1988 but prior to April 18, 1994; or

6        (c) A confirmed release was reported prior to April 18, 1994, regardless of the submittal  
7        date of the Notice of Intent to Permanently Close Underground Storage Tank System. ~~[A UST~~  
8        ~~system owner or operator that chooses to remove a UST system from the ground that was~~  
9        ~~permanently closed in place, or empty and taken out of service, prior to December 22, 1988 shall~~  
10       ~~comply with the requirements that were in place prior to April 18, 1994, regardless of the~~  
11       ~~submittal date of the Notice of Intent Form.~~

12       ~~(4) If the cabinet determines that a UST system that closed before December 22, 1988~~  
13       ~~poses a current or potential threat to human health, safety, or the environment, the owner or~~  
14       ~~operator shall assess the excavation zone and close the UST system in accordance with of this~~  
15       ~~administrative regulation.~~

16       ~~(5) The documents incorporated by reference in Section 9 of this administrative~~  
17       ~~regulation shall be used in meeting the requirements of this administrative regulation.]~~

18       Section 2[3]. Temporary Closure. (1) If a UST system is temporarily closed, the owners  
19       and operators shall continue operation and maintenance of corrosion protection and UST system  
20       release detection in accordance with 401 KAR 42:030 and 401 KAR 42:040. If a UST system  
21       release is suspected or confirmed, the owners and operators shall comply with 401 KAR 42:050  
22       and 401 KAR 42:060. UST system release detection is not required as long as the UST system is  
23       empty.

1       (2) In addition to the requirements of subsection (1) of this section, if~~[H]~~ a UST system is  
2 temporarily closed for more than three (3) months, the owners and operators shall comply with  
3 the following requirements:

4       (a) Leave vent lines open and functioning;

5       (b) Cap and secure all other lines, pumps, man ways, and ancillary equipment; ~~[and]~~

6       (3) In addition to the requirements of subsections (1) and (2) of this section, if a UST  
7 system is temporarily closed for more than six (6) months, the owners and operators shall  
8 submit~~[(e)-Submit]~~ an amended "UST Facility Registration Form", DEP 7112,~~[(August 2006),~~  
9 ~~{[incorporated by reference in 401 KAR 42:020,]}~~] to the cabinet indicating that the UST system  
10 has changed to temporary closure status.

11       (4)~~[(a)]~~ If a UST system is temporarily closed for more than twelve (12) months, and  
12 does not meet the performance standards of 401 KAR 42:030 and 42:040, the owner or  
13 operator of the UST system shall:

14       (a) Complete permanent closure~~[42:020, then]~~ ~~[the UST system shall be permanently~~  
15 ~~closed]~~ in accordance with the Closure Outline and this administrative regulation; or

16       (b) Request an extension of temporary closure status in accordance with Section 11  
17 of this administrative regulation and perform an assessment in accordance with Section 5  
18 of this administrative regulation.~~[Section 4 of this administrative regulation.~~

19       (b) ~~The owners and operators shall permanently close the substandard UST system at the~~  
20 ~~end of this twelve (12) month period, unless the cabinet provides an extension of the twelve (12)~~  
21 ~~month temporary closure period. The cabinet may grant an extension if the cabinet determines~~  
22 ~~that an extension would not have a detrimental impact on human health or the environment.]~~



1        (5) If an UST system is temporarily closed for more than twelve (12) months, and meets  
2        the performance standards for corrosion protection, spill containment and overfill prevention,  
3        and leak detection in accordance with 401 KAR 42:020, 42:030, and 42:040, owners and  
4        operators shall conduct tank and piping tightness tests on the temporarily closed tanks and piping  
5        prior to returning the UST system to operation.

6        Section 3[4]. Notice of Intent for Permanent Closure and Changes in Service.

7        (1)(a) Owners and operators shall notify the cabinet of their intent to permanently close  
8        or make a change in service for a UST system a minimum of two (2) weeks (fourteen (14)  
9        calendar days) prior to beginning either the permanent closure or change in service in accordance  
10       with sections 4 and 5 of this administrative regulation~~[under subsections (2) and (3) of this~~  
11       ~~section]~~. This notice shall be submitted on the ["]Notice of Intent to Permanently Close  
12       Underground Storage Tank System["] DEP 7114~~[-(January 2006)]~~. Initial abatement action shall  
13       not alleviate the owners and operators from notifying the cabinet of the intent to permanently  
14       close a UST system; however, the cabinet may specify a shorter notification time prior to  
15       permanent closure.

16       (b) The ["]Notice of Intent to Permanently Close Underground Storage Tank System["]  
17       DEP 7114, ~~[(January 2006),]~~ shall only be valid for twelve (12) months following submittal to  
18       the cabinet.

19       Section 4. Permanent Closure or Change in Service. Owners or operators performing  
20       permanent closure or change in service of a UST system shall comply with the requirements of  
21       the Closure Outline.~~[The closure assessment required under Section 5 of this administrative~~  
22       ~~regulation shall be performed after submitting notification to the cabinet, but prior to completing~~  
23       ~~the permanent closure or change in service.~~

1       ~~(2) To permanently close a UST system, the owners and operators shall empty and clean~~  
2       ~~the UST system by removing all tank contents and residual tank materials. All UST systems~~  
3       ~~permanently taken out of service shall be either removed from the ground or filled with an inert~~  
4       ~~solid material.~~

5       ~~(3) Continued use of a UST system to store a nonregulated substance shall constitute a~~  
6       ~~change in service. Before a change in service, the owners and operators shall empty and clean the~~  
7       ~~UST system by removing the tank contents and residual tank materials. The owners and~~  
8       ~~operators shall also conduct a closure assessment in accordance with Section 5 of this~~  
9       ~~administrative regulation.]~~

10       Section 5. Assessing the Site for[~~at a Temporary Closure,~~] Permanent Closure or Change  
11       in Service. (1)(a) In order to complete[~~Before completing~~] permanent closure or change in  
12       service of a UST system, [~~or at the end of the twelve (12) month temporary closure period~~  
13       ~~identified in Section 3(3) of this administrative regulation,~~] the owners and operators shall  
14       measure for the presence of a UST system release in accordance with the Closure Outline.

15       (b) Permanent closure activities shall be reported to[~~where contamination is most likely~~  
16       ~~to be present. In selecting sample types, sample locations, and measurement methods, the owners~~  
17       ~~and operators shall consider the method of closure, the nature of the stored substance, the type of~~  
18       ~~backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a~~  
19       ~~UST system release.~~

20       ~~In accordance with 401 KAR 42:080, the requirements of this paragraph shall be satisfied~~  
21       ~~if one (1) of the external UST system release detection methods allowed in 401 KAR 42:040 is~~  
22       ~~operating in accordance with the requirements in 401 KAR 42:040 at the time of closure and~~  
23       ~~indicates that no UST system release has occurred during the life of the UST system.~~

1       ~~(b) The closure assessment required by paragraph (a) of this subsection shall be~~  
2       ~~performed in accordance with the requirements of the "Closure Outline", (August 2006). to The~~  
3       ~~"Closure Assessment Report", (DEP 8055, (August 2006), shall be received by]~~ the cabinet  
4       within ninety (90) days after UST system removal, closure in place, or change in service, in  
5       accordance with the Closure Outline.

6       (2) If analytical results from permanent closure sampling indicate that further actions are  
7       necessary, those actions shall be determined at the written direction of the cabinet, in accordance  
8       with 401 KAR 42:060.~~[If contaminated soils, contaminated groundwater, or free product as a~~  
9       ~~liquid or vapor is discovered under subsection (1) of this section, or by any other manner, initial~~  
10      ~~abatement, site checks, site investigations, corrective action, and public participation, shall be~~  
11      ~~performed in accordance with 401 KAR 42:060.]~~

12      (3) The handling, transportation, and disposal of a[any] regulated substance from a UST  
13      system and [any] contaminated soils, backfill materials; groundwater, cleaning liquids, and other  
14      similar materials generated during activities performed pursuant to this administrative regulation  
15      shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through  
16      49.

17      Section 6. Applicability to previously closed UST systems. Applicability to previously  
18      closed UST systems shall be as established in 40 C.F.R. 280.73.

19      Section 7[6]. Closure Records. (1)(a) Owners or operators shall submit a Closure  
20      Assessment Report, DEP 8055, within ninety (90) days of the date of permanent closure or a  
21      change in service, in accordance with the Closure Outline.

22      (b) The Closure Assessment Report shall be signed by a professional engineer or a  
23      professional geologist pursuant to KRS Chapters 322 and 322A.

1        (2) Owners or operators shall submit Certification of Properly Cleaned USTs, DEP 5039,  
2        to the cabinet when a UST system is permanently closed by removal. ~~[In accordance with 401~~  
3        ~~KAR 42:030 and this administrative regulation, the owners and operators shall maintain records~~  
4        ~~that demonstrate compliance with closure requirements under Section 5 of this administrative~~  
5        ~~regulation. The results of the closure assessment required by Section 5 of this administrative~~  
6        ~~regulation shall be maintained for at least three (3) years after receipt of the closure letter~~  
7        ~~indicating that no further action is required for the permanent closure or change in service.]~~

8        Section 8[7]. Extensions. (1) The owner or operator of a UST system may request an  
9        extension to a deadline established by this administrative regulation or established by the cabinet  
10       in writing pursuant to this administrative regulation.

11       (2) The extension request shall be submitted in writing and received by the Division of  
12       Waste Management prior to the deadline.

13       (3) The cabinet may grant an extension, if the cabinet determines that an extension would  
14       not have a detrimental impact on human health or the environment. ~~[The owner or operator of a~~  
15       ~~UST system may request extension of the time frame for reports required by this administrative~~  
16       ~~regulation. The extension request shall be submitted in writing and received by the Underground~~  
17       ~~Storage Tank Branch of the Division of Waste Management prior to the deadline. The cabinet~~  
18       ~~may grant extensions, if the cabinet determines that an extension would not have a detrimental~~  
19       ~~impact on human health or the environment.]~~

20       Section 9[8]. No Further Action Letter.

21       (1) If a UST facility has met all applicable requirements in 401 KAR Chapter 42, the  
22       cabinet shall issue a no further action letter ~~[for the UST facility].~~

1 (2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in  
2 full prior to the cabinet issuing a no further action letter [to any UST facility].

3 (3) Upon a determination by the cabinet that a threat to human health or the environment  
4 exists; related to a release or permanent closure for which a No Further Action letter was  
5 previously issued, the cabinet may revoke the No Further Action letter and require necessary  
6 action in accordance with 401 KAR Chapter 42.

7 Section 10[9]. Incorporation by Reference. (1) The following material is incorporated by  
8 reference:

9 (a) "Closure Outline", (July[April] 2011)[(August 2006)];

10 (b) "Notice of Intent to Permanently Close Underground Storage Tank System", DEP  
11 7114, (April 2011)[(January 2006)];

12 (c) "Closure Assessment Report ", DEP 8055, (April 2011)[(August 2006)];

13 (d) American Petroleum Institute Recommended Practice 1604, "Closure of Underground  
14 Petroleum Storage Tanks", (Reaffirmed 2001);

15 (e) "Certification of Properly Cleaned USTs", DEP 5039, (April 2011);[American  
16 Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of  
17 Underground Storage Tanks", (June 2001);] and

18 (f) "Test Methods for Evaluation Solid Wastes Physical/Chemical Methods", US EPA –  
19 SW-846, March 2009; and

20 (g) American Petroleum Institute Publication 2015, "Requirements for Safe Entry and  
21 Cleaning of Petroleum Storage Tanks", (August 2001).

22 (2)(a) This material may be inspected, copied, or obtained, subject to applicable  
23 copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second

1 Floor~~[Underground Storage Tank Branch, 81 C. Michael Davenport Blvd.]~~, Frankfort, Kentucky  
2 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

3 (b)(3) This material is also available on the Division of Waste Management's Web site  
4 at <http://waste.ky.gov/ust>.

5 (c) The material found in subsection (1)(f) may be obtained at:  
6 <http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>.~~[may also be obtained~~  
7 ~~by calling the Division of Waste Management at (502) 564 5981 or on the division's Web page~~  
8 ~~located at [www.waste.ky.gov](http://www.waste.ky.gov)]~~

401 KAR 42:070 approved for filing.

7/13/11  
Date

L. K. Peters  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements for out-of-service UST systems, temporary and permanent closure of UST systems, and change in service of UST systems.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the requirements that UST owners have to meet when performing temporary or permanent closure of a UST system or a change in service to a UST system.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by establishing requirements for closure of UST systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statute by establishing requirements for closure of UST systems.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment clarifies the temporary closure requirements.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to clarify temporary closure requirements.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statute by maintaining the requirements for closure.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute by clarifying the temporary closure requirements and the federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:



There are approximately 3,700 UST facilities in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The entities will have to use the new forms when complying with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The changes to the Closure Outline and the CAR form should make the process easier, which should not cost the entities any additional funding.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

UST facilities that conduct closure in accordance with this amendment may receive No Further Action letters from the agency.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There are no additional costs associated with implementation of this amendment.

(b) On a continuing basis:

There are no additional costs associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

This amendment will be implemented and funded through tank fees, PSTeAF, and grants from the US EPA.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees and funding is not necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This amendment does not establish or affect any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is applied for temporary closure based on the amount of time the UST system is in temporary closure.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:070

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No       

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

40 C.F.R. 280 Subpart G; KRS 224.60-105

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year?

There is no additional cost in implementing this amendment.

(d) How much will it cost to administer this program for subsequent years?

There is no additional cost in implementing this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 280 Subpart G

2. State compliance standards.

KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate.

Temporary closure, permanent closure and changes-in-service, assessing the site at closure or change-in-service, applicability to previously closed UST systems, and closure records

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This amendment requires KY specific forms to be used for closure records and tiers the requirements for temporary closure based on the length of time the UST system is temporarily closed.

## Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "Closure Outline", (April 2011). This document is to be used when UST owners are conducting permanent closure of a UST system at the UST facility.

This document consists of 23 pages.

II. This administrative regulation incorporates by reference the "Notice of Intent to Permanently Close Underground Storage Tank System, DEP 7114, (April 2011). This document is to be submitted by UST owners and operators prior to closure of a UST system.

This document consists of 2 pages.

III. This administrative regulation incorporates by reference the "Closure Assessment Report", DEP 8055, (April 2011). This document is to be submitted within 90 days of the permanent closure of a UST system.

This document consists of 7 pages.

IV. This administrative regulation incorporates by reference the "Certification of Properly Cleaned USTs", DEP 5039, (April 2011). This document is to be used to certify that a UST removed from the ground was cleaned and the contents were discarded properly.

This document consists of 1 page.

V. This administrative regulation incorporates by reference the "Test Methods for Evaluation Solid Wastes Physical/Chemical Methods", US EPA -SW-846, March 2009. This document is to be used to find physical and chemical methods for sampling and analyticals.

This document consists of 3500 pages.

**STATEMENT OF CONSIDERATION RELATING TO**  
**401 KAR 42:070**  
**Amended After Comments**

Energy and Environment Cabinet  
Department for Environmental Protection  
Division of Waste Management

**I.** A public hearing on 401 KAR 42:070 was held on May 24, 2011 at 10:00 a.m. in Conference Room 301 D at 300 Fair Oaks Lane, Frankfort, Kentucky, 40601. There were no verbal comments received on 401 KAR 42:070.

**II.** The following people submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Jenna Daniels, Accounting Manager	Hinkle-Meyer Environmental Services, LLC (HMES)
Rob Daniell, Manager	Underground Storage Tank Branch
Lorri Zella, P.E.	American Electric Power (AEP)
Bob Burns, P.G.	Kentuckians for the Commonwealth (KFTC)

**III.** The following people responded to comments:

<u>Name and Title</u>	<u>Affiliation</u>
Anthony Hatton, Director	Division of Waste Management
Rob Daniell, Manager, UST	Division of Waste Management
Cassandra Jobe, Supervisor, PPA	Division of Waste Management

**IV. Summary of Comments and Responses**

**(1) Subject matter: The use of a trip blank.**

**(a) Comment: Jenna Daniels, HMES.**

The use of a trip blank for BTEX samples needs to specify one trip blank per cooler.

**(b) Response:**

The definition of trip blank in 401 KAR 42:005 already accounts for this.

**(2) Subject Matter: Change in Service.**

- (a) **Comment: Rob Daniell, Underground Storage Tank Branch**  
There is requirement for closure sampling due to a Change in Service needs to be in the Closure Outline.
- (b) **Response:**  
The Division agrees and has added language to the Closure Outline to reflect sampling requirements for Change in Service.
- (3) **Subject Matter: Reimbursement in closure outline.**
- (a) **Comment: Rob Daniell, Underground Storage Tank Branch**  
The Division needs to clarify the difference for reimbursement under 401 KAR 42:250 and 401 KAR 42:330.
- (b) **Response:**  
The Division agrees. The introduction of the Closure Outline has been adjusted to adequately reflect appropriate reimbursement opportunities.
- (4) **Subject Matter: Temporary Closure Assessment**
- (a) **Comment: Rob Daniell, Underground Storage Tank Branch**  
Federal regulations allow for an assessment after 12 months of temporary closure. The USTB should allow for this same opportunity.
- (b) **Response:**  
The Division agrees. Language has been added to 401 KAR 42:070 Section 2(4).
- (5) **Subject Matter: Temporary Closure, Permanent Closure Timelines**
- (a) **Comment: Lorri Zella, AEP**  
The various timelines required for the temporary closure of USTs is somewhat burdensome. For example, the requirement to provide information on a "UST Facility Registration Form" during a 6-month temporary closure period does not provide any immediate benefit to the environment. If the tank does not contain any product, there will be no risk to the environment and there would be no need for the 6-month or 12-month temporary closure requirement.  
Revise the regulation to be more specific in terms of temporary closure when the tank does contain a fluid. If the UST contains a fluid, then it may be necessary to file the "UST Facility Registration Form", during a 6-month or 12-month temporary closure period. If the UST system is temporarily closed for more than 12 months and contains a fluid, then there should be a provision to allow the owner or operator to decide to close the UST or to put it back in service.
- (b) **Response:**  
The Division disagrees. The registration form is the mechanism by which the Division is notified as to the status of the tank and whether it contains regulated substance.
- (6) **Subject Matter: Excavation of soil.**
- (a) **Comment: Bob Burns, KFTC**  
How long until re-excavation of soil or until a site becomes petroleum contaminated soil treatment facility?
- (b) **Response:**

In order to be a Petroleum contaminated soil treatment facility, an owner or operator has to apply for a permit in accordance with the requirements of 401 KAR 47:205, 47:207, 48:205, 48:206, 48:207, and 48:208.

(7) **Subject Matter: Pit water.**

(a) **Comment: Bob Burns, KFTC**

What is pit water?

(b) **Response:**

Pit water is water found in the excavation zone that does not constitute groundwater.

## **V. Summary of Action Taken by Promulgating Agency**

**401 KAR 42:070: Comments were considered and the following changes are suggested:**

**Page 2**

**Section 1(2)**

**Line 19**

Delete "for lead in soil".

**Page 2**

**Section 1(2)**

**Line 20**

After "shall be", insert "determined".

Delete "addressed".

After "Section", insert "1(2)".

Delete "1(3)".

**Page 4**

**Section 2(4)**

**Line 12**

After "42:040,", insert "the owner or operator of the UST system shall: (a) Complete permanent closure".

Delete "the UST system shall be permanently closed".

**Page 4**

**Section 2(4)**

**Line 13**

After "Closure Outline", insert "and this administrative regulation; or (b) Request an extension of temporary closure status in accordance with Section 11 of this administrative regulation and perform an assessment in accordance with Section 5 of this administrative regulation."

**Page 9**

**Section 10(1)(a)**

**Line 18**



After "Closure Outline, (" , insert "July".  
Delete "April".

The following changes were made to the Closure Outline, which was filed with the Amended After Comments version of the administrative regulation:

The Closure Outline was amended to clarify the inclusion of sampling for change in service.